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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MIKE KELLY; CORRY-LYN KELLY,  
12 Plaintiffs,

13 vs.

14 COUNTRYWIDE HOME LOANS, INC., an  
15 ens legis being used to conceal fraud;  
16 MORTGAGE ELECTRONIC  
17 REGISTRATION SYSTEMS, INC., an ens  
18 legis being used to conceal fraud; BANK OF  
19 AMERICA, an ens legis being used to  
20 conceal fraud; RECONSTRUCT  
COMPANY, an ens legis being used to  
conceal fraud; FEDERAL NATIONAL  
MORTGAGE ASSOCIATION (FANNIE  
MAE), an ens legis being used to conceal  
fraud; JOHN DOES (INVESTORS), 1  
through 10,000, et al.,

Defendants.

CASE NO. 11cv699 WQH (BLM)

ORDER

21 HAYES, Judge:

22 On March 3, 2011, Plaintiff initiated this action by filing a Complaint in the San Diego  
23 County Superior which was removed to this Court on April 6, 2011. On April 13, 2011, a  
24 Motion to Dismiss and Motion to Expunge Lis Pendens was filed by Defendants Countrywide  
25 Home Loans, Inc.; Mortgage Electronic Registration Systems, Inc.; Bank of America;  
26 ReconTrust Company; and Federal National Mortgage Association (Fannie Mae). (ECF No.  
27 4). Defendants contend that: (1) Plaintiffs' claims which are based on a "vapor money" theory  
28 and "redemption" do not support any legal theory; (2) Plaintiffs' fraud claims are not pled with

1 particularity; and (3) Plaintiffs' claims under the Rackateer Influenced and Corrupt Practices  
2 Act are barred by the statute of limitations and are not adequately plead. To date, Plaintiffs  
3 have not responded to the Motion to Dismiss or the Motion to Expunge Lis Pendens.

4 A district court may properly grant an unopposed motion pursuant to a local rule where  
5 the local rule permits, but does not require, the granting of a motion for failure to respond. *See*  
6 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1 provides: "If an  
7 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that  
8 failure may constitute a consent to the granting of a motion or other request for ruling by the  
9 court." S.D. Cal. Civ. Local Rule 7.1(f)(3)(c). "Although there is ... a [public] policy favoring  
10 disposition on the merits, it is the responsibility of the moving party to move towards that  
11 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics." *In re Eisen*,  
12 31 F.3d 1447, 1454 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to  
13 prosecute); *see also Steel v. City of San Diego*, No. 09cv1743 MMA (WVG), 2009 WL  
14 3715257 at \*1 (S.D. Cal., Nov. 5, 2009) (dismissing action pursuant to Local Rule 7.1 for  
15 plaintiff's failure to respond to a motion to dismiss).

16 The Motion to Dismiss and the Motion to Expunge Lis Pendens contains a proof of  
17 service indicating that Plaintiffs were served with the Motion. (ECF No. 4 at 4). The Motion  
18 and the Court's docket reflect that the hearing for the Motion to Dismiss and Motion for  
19 Expungement of Lis Pendens was noticed for May 16, 2011. Civil Local Rule 7.1 provides:  
20 "each party opposing a motion ... must file that opposition ... with the clerk ... not later than  
21 fourteen (14) calendar days prior to the noticed hearing." S.D. Cal. Civ. Local Rule 7.1(e)(2).  
22 As of the date of this Order, Plaintiffs have failed to file an opposition. The Court concludes  
23 that "the public's interest in expeditious resolution of litigation," "the court's need to manage  
24 its docket," and "the risk of prejudice to the defendants" weigh in favor of granting the Motion  
25 to Dismiss and the Motion to Expunge Lis Pendens for failure to file an opposition. *Ghazali*,  
26 46 F.3d at 53.

#### 27 CONCLUSION

28 IT IS HEREBY ORDERED that the Motion to Dismiss and the Motion to Expunge Lis

1 Pendens is GRANTED. (ECF No. 4). The Complaint (ECF No. 1) is DISMISSED without  
2 prejudice as to Defendants Countrywide Home Loans, Inc.; Mortgage Electronic Registration  
3 Systems, Inc.; Bank of America; ReconTrust Company; and Federal National Mortgage  
4 Association (Fannie Mae). The lis pendens is expunged.

5 DATED: July 25, 2011

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7 **WILLIAM Q. HAYES**  
8 United States District Judge  
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